

H. Byers & Marian B. Smith Trust

v.

City of Concord

Docket No.: 23366-07LC

ORDER

This “Order” relates to whether the Taxpayer timely filed an abatement request with the “City” for the August 6, 2007 land use change tax (“LUCT”) bill relative to Map 122, Lot 3-21 at 61-65 Sanborn Road (the “Property”). The board noticed a limited hearing for October 1, 2008 at which only the City representatives were present.

Based on the evidence contained in the record, the board concludes the Taxpayer did not timely file an abatement request and thus the board dismisses the appeal.

RSA 79-A:10, I states: “Any person aggrieved by the assessment of a land use change tax may, within two months of the notice of tax date and not afterwards, apply in writing to the selectmen or assessors for an abatement of the land use change tax.”

(Emphasis added.) RSA 79-A:10, IV defines “notice of tax date” as “the date the taxing jurisdiction mails the land use change tax bill.”

A copy of the LUCT bill contained in the record indicated it was dated August 6, 2007 and was addressed to “H. Byers Smith Et Als” [sic] at 701 Daniels Road, Pike, NH.

For an abatement to be timely pursuant to RSA 79-A:10, I, it needed to have been filed with the City no later than two months following the tax bill date or by October 6, 2007.

Title to the Property is held in the form of a trust with Brian Smith and Lora Goss as Trustees. In an October 25, 2007 letter to the City tax collector, Lora Goss of 698 Daniels Road, Pike, NH contested the LUCT which the City treated as the abatement request. In that letter, Ms. Goss stated she received the bill on October 17, 2007 but also noted the bill had been sent to her brother, Brian Smith at 701 Daniels Road, Pike, NH. However, given the letter's date, the City argued it was not timely filed.

The board finds the City followed proper procedures in issuing the LUCT bill and addressing it to the most recent address provided to the City by the Taxpayer. Contained in the record is a copy of the "remittance coupon" of the 2005 tax bill where the Taxpayer indicated the City's present mailing address for the Taxpayer of 393 Mountain Road, Concord, NH was incorrect and should be changed to 701 Daniels Road, Pike, NH. Based on that correction request, the City revised the billing address to 701 Daniels Road, Pike, NH. This is apparently the address of one of the Trustees, Brian Smith. The Taxpayer did, subsequent to the LUCT bill, in an October 17, 2007 letter from Lora Goss, direct the City to revise the mailing address from 701 Daniels Road to Lora Goss at 698 Daniels Road. However, at the time of the issuance of the LUCT bill, the City properly sent the bill to Brian Smith at 701 Daniels Road, Pike, NH, the address the Taxpayer had at that time instructed the City to send tax bills. The fact Ms. Goss did not receive it from Brian Smith, Co-Trustee until October 17, 2007 does not extend the statutory deadline contained in RSA 79-A:10, I. Statutory deadlines are in the nature of a statute of limitations and cannot be extended unless provided for specifically by statute.

“Whether the late filing is due solely to oversight or omission by the taxpayer's counsel, and whether excusable or not, the relief sought is barred.” Arlington Am. Sample Book Co. v. Board of Taxation, 116 N.H. 575 (1976).

Consequently, because the abatement request was not timely filed, the board dismisses the appeal because the prerequisite statutory filing requirements have not been met.

A motion for rehearing, reconsideration or clarification (collectively “rehearing motion”) of this decision must be filed within thirty (30) days of the clerk’s date below, not the date this decision is received. RSA 541:3; Tax 201.37. The rehearing motion must state with specificity all of the reasons supporting the request. RSA 541:4; Tax 201.37(b). A rehearing motion is granted only if the moving party establishes: 1) the decision needs clarification; or 2) based on the evidence and arguments submitted to the board, the board’s decision was erroneous in fact or in law. Thus, new evidence and new arguments are only allowed in very limited circumstances as stated in board rule Tax 201.37(g). Filing a rehearing motion is a prerequisite for appealing to the supreme court, and the grounds on appeal are limited to those stated in the rehearing motion. RSA 541:6. Generally, if the board denies the rehearing motion, an appeal to the supreme court must be filed within thirty (30) days of the date on the board’s denial.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

Paul B. Franklin, Chairman

Michele E. LeBrun, Member

Douglas S. Ricard, Member

Certification

I hereby certify copies of the foregoing Order have been mailed this date, postage prepaid, to: H. Byers & Marian B. Smith Trust, Lora Goss and Brian Smith, Trustees, 698 Daniels Road, Pike, NH 03780; H. Bernard Waugh, Jr., Esq., Gardner, Fulton & Waugh, PLLC, 78 Bank Street, Lebanon, NH 03766, representative for the Municipality; Chairman, Board of Assessors, City of Concord, 41 Green Street, Concord, NH 03301; and the Current Use Board, P.O. Box 457, Concord, NH 03302, Interested Party.

Dated: 10/15/08

Anne M. Stelmach, Clerk